In the High Court of Punjab and Haryana, Chandigarh.

S.T.C. No. 1 of 1993

Date of Decision: 10.9.2007

The Batala Cooperative Sugar Mills Ltd.

…Applicant

Versus

The State of Punjab and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR.JUSTICE AJAY KUMAR MITTAL

Present: Mr. M.R. Sharma, Advocate,
for the applicant.

Mr. Amol Rattan Singh, Addl. AG, Punjab.
for the respondents.

M.M.KUMAR, J.

The Batala Cooperative Sugar Mills Limited, has approached this Court by filing application under Section 22(2) of the Punjab General Sales Tax, Act, 1948 (for brevity, 'the Act') for issuance of direction to the Sales Tax Tribunal, Punjab-respondent No. 2 for sending the statement of the case alongwith the following questions of law for the opinion of this Court:-

"(A) Whether on the facts and circumstances of the case if a regd. (registered?) dealer having furnished returns in respect of a period fails to comply with the terms of a notice issued under sub-section (2) of section 11 the Assessing Authority shall withinfive years afterthe expiry of such period proceed to assess to the best of his judgment the amount of tax due from the dealers as such the assessment was barred by limitation?

(B) Whether on the facts and circumstances of the case the

provision of Section 4-B of the Punjab General Sales Tax Act, applies for the levy of purchase/sales tax on the purchases of surgarcane. When on the contrary sugarcane is an agriculture produce and falls under entry No. 39 of the Schedule 'B' of the Punjab General Sales Tax Act, 1948?

(C)(i) Whether there is an implied contract of bardana sold alongwith sugar?

(ii) Whether the bardana sold alongwith sugar is exigible to tax under the Punjab General Sales Tax Act, 1948?"

Facts in brief are that the applicant is a registered dealer under the Act and it deals in the business of sugar manufacturing. It has filed quarterly returns on time declaring gross turnover at Rs. 4,47,76,360.85 paise. The competent officer feeling not satisfied with the return filed by the applicant, issued a statutory notice in Form ST-XIV, which was duly served upon the applicant. Accordingly, it produced its books of accounts and the Assessing Authority after examinging the books of accouns assessed the purcahse of sugarcane and other material used for the manufacture of tax free goods. An additional demand of Rs. 16,57,134/- was raised vide order dated 30.11.1989 by the Assessing Authority, Batala. The Deputy Excise and Taxation Commissioner (Appeals), dismissed the appeal on 18.1.1991 and the Tribunal also upheld the order passed by the Assessing Authority by observing as under:-

"6. I have carefully considered the arguments of both sides and perused the record. It is not correct to say that sugar cane being agricultural produce per se is exempt from tax as per entry 39 of the schedule 'B' of the Act. In fact this seems to be wrong interpretation of this entry. A perusal thereof will show that it is not merely agricultural produce per se would be exempted from tax, but the goods being grown and sold by an

agriculturist would be so exempted. In this entry, therefore, nothing more can be read than the proposition that the agricultural produce when sold would be exempted from sales tax. For the purpose of fastening the tax liability on a dealer, the purchase transaction by him cannot be considered to be the same thing as the same transaction by a grower. The purchase of agricultural produce by a dealer from grower is distinct from sale by a grower. The Full Bench judgment of Punjab and Haryana High Court in the case of Des Raj Parshotam Lal and others (42 STC 29) over-ruled the decision of the Punjab and Haryana High Court in Malwa Sugar Mills (38 STC 39) and affirmedthe decision of Double Bench of the same court in the case of Babu Ram Jagdish Kumar (38 STC 259) on page 276 where their lordships haveheld that sale and purcahses are two different transactions and when the legislature envisages exemption on a sale transaction, it cannot be interpretted to mean that they also intend to exempt a purchase transaction. The purchase transaction in these circumstances is not covered by Entry 39 of Schedule 'B' of the Punjab Act and therefore, section 4-B gets attracted as the same is used for manufacture of goods, sugar, a tax free item. (emphasis added)

Regarding tax on bardana, it cannot be said that gunny bags used in this casefor packing sugar, purcahsed on the strength of Registration Certificate, were a cheap mode of conveyance, Gunny bags are goods of significant value and have got resale value and are therefore, exigible to tax. Accordingly it can be presumed that there is an implied contract of sale of bardana and it has rightly been taxed. The assessment is also not barred by time as ST XIV was served on 2.3.1983, which is within fiveyears from the date of filing of

return and all the case law reliedupon is of no avail. Accordingly on all grounds, appeal fails and dismissed."

The applicant thereafter filed an application before the Tribunal, under Section 22 of the Act with a prayer for referring the aforesated questions of law for the opinion of this Court. However, the Tribunal dismissed the application holding that no legal issues arise requiring adjudication at the hands of this Court and all the questions raised are questions of facts. The Tribunal also placed reliance on Full Bench judgment of this Court in the case of **Des Raj Parshotam Lal v. State of Punjab, (1978) 42 STC 429** and other judgments in support of the view that sugarcane purchased by the applicant directly from the growers is liable for purchase tax.

We have heard learned counsel for the parties at a considerable length and are of the view that the application deserves to be allowed.

Learned counsel for the applicant has not addressed any argument on question (A) concerning period of limitation, therefore, the aforementioned question does not need to be considered.

We, however, proceed to consider the other two questions. A perusal of the record shows that on 6.7.1993, a Division bench of this Court has ordered listing of this case after the decision of Full Bench in C.W.P. No. 661 of 1984 i.e. **Morinda Co-operative Sugar Mills Ltd. v. Assessing Authority, (1995) 99 STC 468**. It has transpried that the Full Bench has now decided the matter by taking the view that the purchase tax under Section 4 (1) of the Act is leviable on sugarcane purchased directly from the growers by sugar mills or cooperative societies like the petitioner. When the matter came up for consideration before the Full Bench in the case of Morinda Co-operative Sugar Mills Ltd. (supra), a number of other writ petitions were also taken up for hearing, which included a set of petitions comprising of C.W.P. Nos. 5363 to 5369 of 1982 along with many others. The Full Bench noticed and decided that set of petitions by observing as under:

" In Civil Writ Petition Nos. 5363 to 5369 of 1982, 189 of

1983 and 5248 of 1982, the only challenge to the orders of the Assessing Authority, appellate authority and the Tribunal is to the levy of purchase tax under section 4-B of the Punjab Act on the purchase of sugarcane made from the growers or their family members directly except in C.W.P. No. 5248 of 1982 where an additional challenge is also to the levy of tax on *bardana* (gunny bags).

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The orders passed by the Sales Tax Tribunal in C.W.P. Nos. 5363 to 5369, 5248 of 1982 and 189 of 1983 are set aside and the matters are remitted to the Tribunal for decision afresh in accordance with law, after hearing learned counsel for the parties. It shall be open to the Tribunal to decide the matters itself or if found necessary, remit the same to the authorities for decision afresh."

It is evident that the assessment order in those cases were framed under Section 4-B of the Act and not under Section 4(1) thereof, which resulted quashing of those orders. It is, therefore, evident that the Full Bench had taken the view that Section 4-B was not relevant to the petitioners whereas the assessment was required to be framed under Section 4(1).

In the present case also, the assessment has been framed under Section 4-B and, therefore, question (B) has to be answered in favour of the applicant by following course adopted by the Full Bench. Likewise, question (C) would also deserve to be re-considered by the Tribunal as has been held by the Full Bench.

We would have adopted the course of first directing the Tribunal to prepare statement of case and refer the questions of law (B) and (C) for the opinion of this Court, had the legal position not been settled. Questions 'B' and 'C' as aforesated are similar to the one which were before the Full Bench

of this Court. The order of the Tribunal was set aside because the only challenge was to the levy of purchase tax under Section 4-B of the Act on the purcahse of sugarcane made from the grower or from their family members. The other issue was levy of tax on *bardana* (gunny bags). Therefore, it would be futile exercise to adopt the course to first send the case to the Tribunal with a direction to submit statement of the case and then answer the questions of law. Therefore, we would adopt the course of setting aside the order of the Tribunal, dated 5.12.1991 (P-3), dismissing the appeal of the applicant whereby order dated 18.1.1991 passed by the Appellate Authority (P-2) has been upheld.

In view of the above, order dated 5.12.1991 is set aside. The matter is remitted back to the Tribunal for taking a fresh decision in accordance with law after affording an opportunity of hearing to the parties. It is made clear that the Tribunal shall be free to decide the matter itself or remit the same to the Appellate Authority/Assessing Authority for decision afresh. In view of the settled law laid down by the Full Bench of this Court in the case of Morinda Co-operative Sugar Mills Limited (supra) based on the judgment of Hon'ble the Supreme Court in the case of M/s Jagatjit Sugar Mills v. State of Punjab, (1995) 96 STC 344 (SC), it is expected that the matter would be decided expeditiously by determining the tax liability as per law, which was then applicable.

A copy of the order be given dasti to the parties on payment of usual charges.

(M.M.KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

September 10, 2007
Pkapoor